IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.539 OF 2003

IN

SUMMARY SUIT NO.49 OF 2003

M/s Sevantilal & Sons .. Plaintiff

versus

Mr. Haresh K.Shah .. Defendant

Mr.N.R.Patel for Plaintiff.

Mr.P.C.Mankad for Defendant.

CORAM : D.G. KARNIK, J

DATED : 3rd March, 2005.

P.C:-

1. Heard learned counsel for the parties.

2. Learned counsel for the plaintiff hands in the affidavit of service of the Summons for Judgment. Learned counsel for the defendant also admits receipt of the Summons for Judgment on 2nd July, 2003. Despite service of the Summons for Judgment nearly 18 months ago the defendant has not applied for leave to

defend nor filed any affidavit in reply. Learned counsel for the defendant sought to tender the affidavit in reply today which was objected to by learned counsel for the plaintiff on the ground that period of 10 days is already over and no reason has been assigned for the delay. As there is no ground for condoning the delay the affidavit in reply cannot be taken on record.

3. In the absence of any application for leave to defend or affidavit in reply filed/tendered in time, averments made in the plaint are deemed to be accepted and the plaintiff is entitled to a decree under order 37 Rule 3 (6) of the Code of Civil Procedure.

4. Learned counsel for the plaintiff also hands in the documents along with a list. The documents are taken on record and collectively marked Exhibit A for identification.

5. I have perused the plaint and the documents filed on record. The plaintiff sold supplied and delivered goods and sent invoices. The office copy of the invoice alongwith the delivery challan signed by the defendant is produced on record. By a letter dated

24th November, 1999 the defendant made part payment of Rs.70,000/-. The said payment has been shown by the defendant in its statement of claim. The defendant made a further payment of Rs.80,000/- which is also deducted by the plaintiff as per the statement

As the balance amount is not paid, the plaintiff has filed this suit for the recovery of the amount. The receipt of the goods and the invoice is not disputed. For reasons mentioned, the plaintiff is entitled to a decree under order 37 Rule 3 (6) of the Code of Civil Procedure. Summons for Judgment is made absolute and suit of the plaintiff is decreed as follows :

> " The defendant shall pay to the plaintiff Rs.15,00,000/- together with interest on the principal sum of Rs.9,27,732/- at 9 % p.a. from the date of the suit till payment and all costs of the suit. Issue court fee refund as per rules.

D.G.KARNIK, J